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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

DONALD LEE NELSON,

Defendant and Appellant.

C061731

(Super. Ct. No.
CM026513)

Defendant, Donald Lee Nelson, pleaded no contest to one count of possessing methamphetamine (Health & Saf. Code, § 11377, subd. (a)) and giving a false name to a police officer (Pen. Code, § 148.9, subd. (a).) When he was ultimately committed to the California Rehabilitation Center, the trial court imposed various fines and fees, only one of which he challenges on appeal: defendant contends the court erred when it imposed "two \$5 DNA identification fund fees pursuant to Government Code section 76104.6." The contention is frivolous.

Our review of the record indicates the court did *not* impose two DNA identification fees under Government Code section

76104.6. Rather, the court stated it was imposing "a \$5 DNA identification fund fee pursuant to 76104.6 of the Government Code, and a \$5 DNA identification fund fee pursuant to 76104.7"

This was not error. "The voters and Legislature have directed the imposition of two deoxyribonucleic acid penalties. First, Government Code section 76104.6, subdivision (a), which was initially adopted as Proposition 69 in the November 2, 2004 General Election, provided for the imposition of a \$10 penalty for the purpose of implementing the DNA Fingerprint, Unsolved Crime and Innocence Protection Act to be levied on every fine, penalty, or forfeiture imposed in felony and other cases. . . . Second, in 2006, the Legislature added Government Code section 76104.7 to provide for an additional deoxyribonucleic acid state-only penalty. (Stats. 2006, ch. 69, § 18.)" (*People v. Valencia* (2008) 166 Cal.App.4th 1392, 1395.) Government Code section 76104.6, subdivision (a)(1) now states in part: "[F]or the purpose of implementing the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, there shall be levied an additional penalty of one dollar for every ten dollars (\$10), or part of ten dollars (\$10), in each county upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses"

In contrast, Government Code section 76104.7, subdivision (a) states in part: "[I]n addition to the penalty levied pursuant to Section 76104.6, there shall be levied an additional state-only penalty of one dollar (\$1) for every ten dollars

(\$10), or part of ten dollars (\$10), in each county upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses"

The court did not err in imposing a fee under both sections.

Nor did the court err in calculating that fee, as defendant suggests. Both DNA identification fund fees were properly based on the criminal laboratory analysis fee of \$50 that the court imposed pursuant to Health and Safety Code section 11372.5, subdivision (a). This was proper. (Gov. Code, § 76104.6, subd. (a)(3).)

As defendant has failed to demonstrate any error, we affirm the judgment.

DISPOSITION

The judgment is affirmed.

NICHOLSON, J.

We concur:

SCOTLAND, P. J.

SIMS, J.